II. BOOK REVIEWS.

CASES ON QUASI-CONTRACTS, Edited with notes and references. By James Brown Scott. New York: Baker, Voorhis, and Company. 1905. pp. xvi, 772. 8vo.

Professor Scott's object in making this book was to provide a case book of moderate size for the use of students. The bulk of Judge Keener's case book, including, as it frequently does, many cases reprinted in full, illustrative of the same application of a legal principle, makes it an unsatisfactory book for the use of students in a half course. Professor Woodruff's book, by an odd coincidence, appeared almost simultaneously with the work under review.

By condensation of some cases and by the selection of short cases, wherever this was possible, Professor Scott has adequately covered at least as much ground as Judge Keener did. As the publishers of the new book were the owners of the copyright of the older work and placed it at the disposal of Professor Scott, he might fairly have made much larger use of it than he has done. Though many cases in the two books are identical, the large majority are not, and the new cases are well selected. The notes greatly add to the value of the work, and the editor has used his learning in the Civil Law to furnish the book with illustrations from that source. In this way he has shown not only the antiquity, but the inherent propriety of treating quasi-contracts as a separate department of the law. The syllabus index is an excellent piece of work, the more meritorious because many case books are without such aid to the reader.

The book gives rise to a suggestion, not a criticism, which concerns the making of case books generally and which involves a question upon which opinions will doubtless differ. In the division of the law into various topics, it is impossible that each topic should wholly exclude every other. Consequently not only do treatises on one subject in fact deal with many matters which are also dealt with by treatises on other subjects, but completeness of treatment can be obtained in no other way. We wish to raise the question whether it is desirable to make case books upon the same plan. Case books are used only for the instruction of students. They do not and never can take the place in professional use which treatises occupy. The utility of the plan of a case book for instruction in a law school must be the governing consideration. Is it desirable, then, to include such matters as general average and contribution between sureties in a case book on quasi-contracts? Both topics present instances of quasi-contractual obligations, but are not the places for the student to consider them courses on admiralty and suretyship? Professor Scott disclaims any treatment of these topics beyond what is essential to show the quasi-contractual nature of the obligation; but is it possible to take up satisfactorily with students a number of cases on contribution between sureties, without going into the matter at large, in the same way as would be done in a course on suretyship? It may be urged that this may well be done both in a course on suretyship and in one on quasi-contracts, and that the student will gain from approaching the matter on several sides. Doubtless there are some questions of legal theory so fundamental that they must arise in more than one course, but, where possible, does not the great pressure for time in our legal courses require that duplication of work should be avoided? If so, the author of a case book should not endeavor to touch upon every matter logically within its title, but should deal with such matters only as belong to that title exclusively or more naturally than to any other. Such matters as are included should be dealt with thoroughly, for students cannot satisfactorily study from cases a single aspect of a subject or of a decision.

A related question may be raised in regard to arrangement. Professor Scott follows Judge Keener in making such introductory headings as "Wherein quasi-contract differs from a pure contract," and "Wherein quasi-contract differs from a tort." These are appropriate headings for a treatise, and under them an author would properly consider one aspect of decisions most of

which would be cited elsewhere in the book for the point primarily decided by them. But teacher and student dealing with cases must generally deal with them once for all. The minute subdivision of a treatise cannot, therefore, be satisfactorily used as a model. The cases must be grouped according to their most general and obvious effect, and subordinate matters must be brought out in passing. The time when the student of Professor Scott's book might fairly be asked wherein a quasi-contract differs from a pure contract or a tort, is at the close of the book, for most of the cases in it in some degree aid in the answer, rather than after reading the sections specifically devoted to these questions.

We have taken the occasion afforded by the appearance of Professor Scott's book to suggest an inquiry we have had for some time in mind. In so doing we fully recognize, and wish to make it clear, that more than one answer to the inquiry will find champions and that even where the views here suggested are accepted, the application of them will give rise to new difference of opinion. Each instructor must to some extent follow his own idiosyncrasies, whatever book he may use. Professor Scott has furnished abundant and well selected material, carefully edited and annotated. This is the one essential requisite, and it is fully satisfied. S. W.

THE LAW OF BAILMENTS, INCLUDING PLEDGE, INNKEEPERS AND CARRIERS. By James Schouler. Boston: Little, Brown, and Company. 1905. pp. xxxii, 415. 8vo.

This book, which is based upon a larger work by Professor Schouler, might better have been named Carriers, including Bailments, for more than two thirds of the work is devoted to a discussion of the peculiar law governing carriers, not only as bailees of goods but as transporters of passengers. The one third concerned with the treatment of the general law of Bailments serves as an introduction enabling the author to give up the balance of the book to a consideration of those features of the law of Carriers which are *sui generis*.

The principles of the law of Carriers are fairly well settled, and are comparatively simple. The recent decisions seldom give more than the application of the old saws to the modern instances. Beyond question the author has, generally speaking, stated both the principle and the precept; the defects of the book are in the manner of presentation.

Taking the volume as a whole, its dominant characteristic is carelessness. Carelessness marks the index, the heading of paragraphs, the rhetoric, and even the distinctions taken. We are told in the preface that "the main purpose of this volume is to supply students and the professional lawyer alike with an elementary treatise which may serve for study and practical use." Yet its contents are so inadequately and so unscientifically indexed as to reduce the practical value of the book to the professional lawyer to a minimum. For example, one can find "stoppage *in transitu*" only by turning to the head "CARRIERS, COMMON (or PUBLIC)"; then to the subhead, "termination of carrier's responsibility" (p. 409); and then to the sixth line under this subhead, which reads, "doubt; 'care of'; misdirection; stoppage *in transitu*, 397, 398." And this is but one of many cases of needles in the haystack.

The first few words of the opening sentence of each paragraph are printed in bold-faced type, an expedient which, in many instances, fails altogether to indicate the substance of the paragraph. Thus a paragraph which informs us that canal companies, tug-boats, and log-drivers are not common carriers because they do not control the transporting vehicle is headed, "But here, as elsewhere, the employment to be designated" (p. 152). See also paragraph 261, p. 139.

It is in his rhetoric, however, that the author is most remiss. Only a few sentences need be quoted to demonstrate the book's weakness in this respect. At page 128, in discussing the tests for determining the status of guest, the author says, "Commonly the guest is a temporary sojourner who puts up at the inn to receive its customary lodging and entertainment; and so long as one keeps this transient character." And at page 133, § 309, "and for all acts of his servants . . . directly occasioning loss or injury, the innkeeper must still re-